

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

**HERTZ EQUIPMENT RENTAL CORP., TRAVELERS PROPERTY CASUALTY
CO. OF AMERICA, and TRAVELERS INDEMNITY CO.,**

Respondents,

v.

**AMMON PAINTING COMPANY, VALIANT INSURANCE COMPANY, and
ASSURANCE COMPANY OF AMERICA,**

Appellants.

**DOCKET NUMBER WD70191
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: August 4, 2009

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Jay A. Daugherty, Judge

Appellate Judges:

Division Two: Victor C. Howard, P.J., Joseph M. Ellis and Mark D. Pfeiffer, JJ.

Attorneys:

Attorneys:

Curtis O. Roggow and Scott Waddell
Overland Park, KS

Attorneys for Respondents,

Larry D. Fields, Angela M.B. Kassube and Sarah A. Temps
Kansas City, MO

Attorneys for Appellants.

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**HERTZ EQUIPMENT RENTAL CORP., TRAVELERS PROPERTY
CASUALTY CO. OF AMERICA, and TRAVELERS INDEMNITY CO.,**

Respondents,

v.

**AMMON PAINTING COMPANY, VALIANT INSURANCE COMPANY
and ASSURANCE COMPANY OF AMERICA,**

Appellants.

WD70191

Jackson County, Missouri

Before Division Two Judges: Victor C. Howard, P.J., Joseph M. Ellis and Mark D. Pfeiffer, JJ.

Ammon Painting Company (Ammon) and its insurers, Valiant Insurance Company (Valiant) and Assurance Company of America (Assurance), appeal the trial court's grant of summary judgment for Contractor Supply Company (CSC) (n/k/a Hertz Equipment Rental Corporation) and its insurers, Travelers Indemnity Company (Travelers Indemnity) and Travelers Property Casualty Company of America (Travelers Property), on the respondents' petition below. On appeal, they present seven points.

AFFIRMED.

Division Two holds:

Ammon signed an agreement with CSC that included an indemnification provision. CSC's indemnification provision is clearly worded and plainly requires Ammon to indemnify CSC for any injuries relating from its use of the equipment. Both CSC and Ammon are sophisticated business entities. The indemnification provision is enforceable. Since CSC's indemnity provision is enforceable, the trial court correctly concluded that Ammon's (Indemnitor) primary liability insurance carrier, Valiant, cannot use its "other insurance" provision to compel CSC's (Indemnitee) primary insurance carrier, Travelers Indemnity, to split CSC's claim in equal shares. The trial court correctly ordered Ammon's primary carrier, Valiant, to exhaust its policy in its entirety by paying \$1 million (i.e. the liability policy limit in the Valiant policy) to indemnify CSC for the first \$1 million of the liability settlement.

The trial court did not err in concluding that, once Ammon's primary insurance carrier, Valiant, exhausted its primary liability policy limits, Ammon's excess insurance carrier, Assurance, was liable to exhaust its excess liability policy limits. Since the remaining \$2.5 million of CSC's settlement does not exhaust Assurance's policy limits, we need not decide which insurance company would be required to pay next.

Opinion by: Mark D. Pfeiffer, Judge

Date: August 4, 2009

This summary is *UNOFFICIAL* and should not be quoted or cited.